

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Kenneth L. Stanwood
For : PACKING SOURCE DATA PACKETS
: INTO TRANSPORTING PACKETS
: WITH FRAGMENTATION
Serial No.: : 10/053,179
Filed : January 15, 2002
Art Unit : 2419
Examiner : Gregory B. Sefcheck
Att. Docket : WIL 3009
Confirmation No. : 2846

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the Final Office Action dated September 24, 2009 and further to the Notice of Appeal filed concurrently herewith.

Claims 51-75 and 82-96 are pending in the present application, of which claims 51, 63, 83, and 89 are independent. Applicant hereby requests review of the rejections in the above-identified application in view of the arguments presented in detail herein.

REJECTION UNDER 35 U.S.C. § 102

In section 2 on pages 2-4, the Office Action rejects claims 83 and 85-88 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,963,751 (hereinafter "Kordsmeyer"). Applicant respectfully traverses this rejection.

Independent claim 83 recites, in part, "wherein the length of the PDU is established in conjunction with the bandwidth allocated currently to the specified connection." (emphasis

added). This subject matter allows, *inter alia*, the method to better use the bandwidth shared by a plurality of subscriber stations, where the bandwidth required by each station fluctuates, by basing the length of each PDU on the available bandwidth at the time of PDU construction.

On pages 2-3, the Office Action alleges that the above-quoted subject matter is disclosed by Kordsmeyer. However, as previously explained in Applicant's Amendment filed June 3, 2009, Kordsmeyer's disclosure builds upon the Digital Enhanced Cordless Telecommunications (DECT) standard which specifies fixed-length PDUs. Thus, because the only PDU's disclosed by Kordsmeyer are fixed in length, Kordsmeyer does not disclose, *inter alia*, a PDU with a variable length or/and having the length determined based on at least the currently allocated bandwidth. Further to this point, on page 6, the Office Action correctly concedes that "Kordsmeyer does not explicitly disclose establishing the length of a variable length PDU in conjunction with the bandwidth allocated to the connection."

In the "Response to Arguments" on page 14 of the Office Action, the Examiner states that "Claim 83 only explicitly requires that the PDU length be established in conjunction with the bandwidth allocated currently to the specified connection. This language does not preclude predefined PDU length based upon the bandwidth of a connection operating under a particular protocol. Therefore, the claim rejection is proper." The Applicant respectfully disagrees with this assertion. The term "currently" used in the claim, when construed in view of the description of the invention provided in the specification, undoubtedly define that the length of the PDU may be dynamically changed for PDUs for the respective connection. Furthermore, claim 84 dependent upon claim 83 states that: "the length of the PDU changes as the bandwidth allocated to the specified connection changes".

Accordingly, Applicant respectfully submits that it was clear error to assert that Kordsmeyer discloses the above-quoted subject matter. Because Kordsmeyer does not disclose every element of independent claim 83 from which claims 85-88 depend, Applicant respectfully requests the withdrawal of the rejection of claims 83 and 85-88 under 35 U.S.C. § 102(e).

REJECTIONS UNDER 35 U.S.C. § 103

In section 4 on pages 5-8, the Office Action purports to reject claims 51-55, 63-67, 75, 82, 84, 89, and 90 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kordsmeyer in

view of U.S. Patent No. 6,128,293 (hereinafter, "Pfeffer"). The body of this rejection does not cite Pfeffer and, instead, cites portions of U.S. Publication No. 2001/0015985 (hereinafter, "Van Grinsven").

Independent claim 51 recites, in part, "the header area of the protocol data unit includes a length field specifying the length of the PDU . ." Independent claims 63 and 89 contain similar recitations. This subject matter is required, *inter alia*, in systems wherein the length of a PDU is variable to allow a receiving device to determine the length of a received PDU and reconstruct the transmitted PDU. On page 6, the Office Action generally cites Kordsmeyer as disclosing the above-quoted subject matter. Kordsmeyer, however, only discloses a length field in the subheader of each SDU, as it is concerned to packing variable size SDUs into a fixed size PDU; there is no reason in Kordsmeyer to specify the length of the PDU, which is a priori known by the receiver, being a parameter configured for the system; as explained above in connection with the DECT standard, the length of the PDU is fixed, and therefore non-variable.

Independent claim 51 further recites, ". . . variable length protocol data units (PDU). . ." and "establishing a length for the protocol data unit based on bandwidth currently allocated to the specified connection[.]" Independent claims 63 and 89 contain similar recitations. On page 6, the Office Action correctly concedes that Kordsmeyer does not disclose the above-quoted subject matter. On page 7, however, the Office Action further cites Van Grinsven as allegedly disclosing this subject matter (namely: "establishing a length for the protocol data unit based on bandwidth currently allocated to the specified connection"), specifically citing paragraphs [0041], [0042], and [0055].

However, Van Grinsven further fails to disclose establishing the length of the variable length cell PDU based on currently allocated bandwidth and, in fact, does not disclose any step of establishing the length assigned to a PDU for a connection based on a bandwidth. This is because Van Grinsven is concerned with a frame assembler, as the title indicates; data framing is defined in dependent claims 52, 64 of the present application. In Van Grinsven the length of the PDU is determined inherently by the size of the incoming packet; the frame assembler FA 8 just fragments a packet if larger than 143 bytes. The length of the PDU in Van Grinsven is not

determined based on the bandwidth allocated to the connection in the current frame as in the claims under consideration.

As indicated in the Table in paragraph [0041], "Identifier 44" field includes a "Format ID" bit, two bits for a "Sequence Identifier" field, and a 4-bit "Size" field. The Format ID is set to "1" to indicate a non-ATM payload. A "10" value in the Sequence Identifier field indicates that the PDU carries a first fragment, a "01" value indicates that the PDU carries a last fragment, a "00" value indicates that the PDU carries a continuing fragment, and a "11" value indicates that the PDU carries a an entire packet. Since the "Size" field has 4 bits, a maximum of 144 bytes can be fitted in the Van Grinsven PDU.

Still further, the cited paragraphs do not describe a per connection "packing and fragmenting" operation as in the claims.

Thus, because no reference discloses, *inter alia*, "... variable length protocol data units (PDU). . .", "establishing a length for the protocol data unit based on bandwidth currently allocated to the specified connection[.]" or "the header area of the protocol data unit includes a length field specifying the length of the PDU. . .", Applicant respectfully submits that the rejection of claims 51-55, 63-67, 75, 82, 84, 89, and 90 under 25 U.S.C. § 103(a) is erroneous. Claims 52-62, 82, and 91-96 depend from allowable claim 51; claims 64-75 depend from allowable claim 63; claim 84 depends from allowable claim 83; and claim 90 depends from allowable claim 89. Accordingly, Applicant respectfully requests the withdrawal of the rejections of claims 51-75, 84, and 89-96 under 35 U.S.C. §103(a).

AFFIDAVIT UNDER 37 CFR 1.132

The Applicant submitted with the last response an Affidavit under 37 CFR 1.132 for the purpose of traversing grounds of rejection. However, there is no indication in the Office Action that the Affidavit was considered. The MPEP specifies at Section 716 that: "*Form paragraph 7.65 or 7.66 and any of form paragraphs 7.66.01 through 7.66.05, as appropriate, should be used to comment on a 37 CFR 1.132 affidavit or declaration.*" These paragraphs should advise the Applicant if the Affidavit is sufficient or insufficient and justify the respective decision. Therefore, the Applicant believes that the Office Action is incomplete.

CONCLUSION

While we believe that the instant pre-appeal brief request for review places the application in condition for allowance, should the Examiner have any further suggestions, it is respectfully requested that the Examiner contact the correspondence attorney listed below at the telephone number listed below in order to expeditiously resolve any outstanding issues.

In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 50-0578 and please credit any excess fees to such Deposit Account.

Respectfully submitted,
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Date: December 10, 2009

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